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HONOURABLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO:7110 of 2004

DATED: 27-11-2007

Between:

V.Ashok

..... PETITIONER

AND

1. Regional Transport Authority and 2 others.

.....RESPONDENTS

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ORDER:

This writ petition has been filed by the petitioner seeking declaration that the order dated 23-07-2003 passed by the second respondent is null and void, and consequentially, direct the second respondent to restore the permit to the petitioner which is valid up to 27-07-2005.

The petitioner purchased an auto through the finance corporation. He was running the auto with a valid permit which was

valid up to 27-07-2005. On 24-03-2003, his father fell sick seriously and on the advise of his relations and neighbours he along with his friends took his father for Unani medicine at Sangareddy. While he was plying his auto on the National Highway, Sangareddy, the third respondent stopped the auto rickshaw and told him about the rules regarding the plying of the auto rickshaw on national highway and issued a check report mentioning certain irregularities and impounded the documents of RC and permit. The second respondent issued a show cause notice mentioning that the auto was plying on the national highway, which is prohibited under Rule 397 of A.P. Motor Vehicles Rules, 1989, and he was directed to explain why the permit should not be cancelled for plying the vehicle on the national highway. He submitted an explanation stating that due to emergency treatment to his father he took his father in the auto rickshaw on the national highway as there was no alternative way to reach the place of treatment. After receipt of the explanation, the second respondent passed the impugned order canceling the permit under Section 86 of the Motor Vehicles Act (for brevity the M.V.Act') directing the petitioner to surrender the permit within seven days from the date of receipt of the order for implementation, therefore, he filed the present writ petition for the relief as mentioned above.

It was mentioned in the show cause notice dated 07-06-2003 that the petitioner was driving the auto rickshaw without valid driving

licence, that the vehicle was found on the national highway, and that fair meter was not operating.

The petitioner approached this Court seeking declaration that the order passed by the second respondent is illegal. But as the impugned order was passed in accordance with the rules under the M.V.Act, there was no illegality found in the order passed by the second respondent. The second respondent has not mentioned in the order whether the auto was regularly plying on the national highway and whether there was any occasion for the transport authorities to witness the vehicle plying on the national highway. In the absence of such material, the order canceling the permit appears to be harsh. Against the order passed by the second respondent there is an appeal provision under Section 89 of the M.V.Act. The petitioner instead of preferring the appeal approached this Court. It would be appropriate for the appellate authority to consider whether it is inevitable for cancellation of the permit when the petitioner was eking out his livelihood by driving the auto.

In the light of the above circumstances, I am inclined to give opportunity to the petitioner to prefer an appeal before the appellate authority under Section 89 of the M.V.Act.

In the result, the writ petition is disposed of with a direction to the petitioner to prefer an appeal before the appellate authority under

Section 89 of the M.V.Act, within thirty days from the date of this order, and on receipt of such appeal, the appellate authority is directed to consider the entire material and pass appropriate orders in accordance with law. No order as to costs.

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27th November, 2007

SKM